

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re Groupon, Inc. Securities  
Litigation

Master File No. 12 C 2450

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

Hon. Charles R. Norgle

**GROUPON DEFENDANTS' MOTION TO DISMISS  
CONSOLIDATED AMENDED CLASS ACTION COMPLAINT**

Pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6), defendants Jason Child ("Child"), Joseph M. Del Preto ("Del Preto"), Kevin Efrusy ("Efrusy"), Eric P. Lefkofsky ("Lefkofsky"), Theodore J. Leonsis ("Leonsis"), Andrew D. Mason ("Mason"), and Howard Schultz ("Schultz") (collectively, the "Individual Defendants"), and Groupon, Inc. ("Groupon," and collectively with the Individual Defendants, the "Groupon Defendants"), by their attorneys, Jenner & Block LLP, respectfully request that this Court enter an Order dismissing with prejudice Counts I, III, IV, and V of plaintiff's Consolidated Amended Class Action Complaint ("CAC") filed on October 29, 2012 (Doc. # 125). In support of this motion, the Groupon Defendants state as follows:

1. In Count I, plaintiff attempts to plead claims against the Groupon Defendants and defendants Morgan Stanley & Co., Goldman, Sachs & Co., and Credit Suisse Securities (USA) LLC (collectively, the "Underwriter Defendants") pursuant to Section 11 of the Securities Act of 1933 (the "Securities Act"). Count I is predicated on alleged misrepresentations in Groupon's registration statement allegedly filed with the

SEC on October 31, 2011 (“Registration Statement”), prior to Groupon’s initial public offering (“IPO”) on November 4, 2011. This claim is without merit as against the Groupon Defendants and should be dismissed pursuant to FRCP 12(b)(6) because the CAC fails to adequately plead any material misrepresentations in the Registration Statement.

2. In Count II, plaintiff attempts to plead claims against the Underwriter Defendants pursuant to Section 12(a)(2) of the Securities Act. As it is not brought against any of the Groupon Defendants, this motion does not address Count II of the CAC on behalf of the Groupon Defendants.

3. In Count III, plaintiff attempts to plead “control person” claims against the Individual Defendants pursuant to Section 15 of the Securities Act. This claim is without merit and should be dismissed pursuant to FRCP 12(b)(6) because plaintiff has not alleged an underlying violation of securities law and because plaintiff has failed to allege control person liability in accordance with Seventh Circuit requirements.

4. In Count IV, plaintiff attempts to plead claims against Groupon and Messrs. Mason and Child pursuant to Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Securities and Exchange Commission (“SEC”) Rule 10b-5. Count IV is predicated on alleged misrepresentations made in a press release issued by Groupon on February 8, 2012 (the “February Press Release”) as well as certain oral statements allegedly made by Messrs. Mason and Child. This claim is without merit and should be dismissed pursuant to FRCP 12(b)(6) because plaintiff fails to adequately plead a strong inference of scienter in accordance with the strict pleading requirements of the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4 (“PSLRA”).

5. In Count V, plaintiff attempts to plead “control person” claims against Messrs. Efrusy, Leonsis, and Schultz (collectively, “the Audit Committee Defendants”) and Messrs. Lefkofsky and Mason pursuant to Section 20(a) of the Exchange Act. This claim is without merit and should be dismissed pursuant to FRCP 12(b)(6) because plaintiff has not alleged an underlying violation of securities law and because plaintiff has failed to allege control person liability in accordance with Seventh Circuit requirements.

6. This motion is supported by a memorandum filed simultaneously herewith, which is incorporated herein by reference.

WHEREFORE, for the reasons set forth above and in their supporting memorandum, the Groupon Defendants respectfully request that the Court enter an Order pursuant to FRCP 12(b)(6) dismissing with prejudice Counts I, III, IV, and V of plaintiff’s CAC.

Respectfully submitted,

Groupon, Inc., Jason Child, Joseph M. Del Preto,  
Kevin Efrusy, Eric P. Lefkofsky, Theodore J.  
Leonsis, Andrew D. Mason, and Howard Schultz

By: /s/ Howard S. Suskin  
One of Their Attorneys

Dated: January 18, 2013

Anton R. Valukas (Illinois Bar #2883678)  
Elizabeth A. Coleman (Illinois Bar #6236597)  
Howard S. Suskin (Illinois Bar #6185999)  
Marc D. Sokol (Illinois Bar #6276263)  
JENNER & BLOCK LLP  
353 N. Clark Street  
Chicago, IL 60654-3456  
(312) 222-9350

*Attorneys for the Groupon Defendants*